

## **1993 Income and Capital Gains Tax Convention and Memorandum of Understanding**

**Treaty Partners:** France; Ghana

**Signed:** April 5, 1993

**In Force:** April 1, 1997

**Effective:** January 1, 1998. See Article 30.

**Status:** In Force

### **CONVENTION BETWEEN THE GOVERNMENT OF THE FRENCH REPUBLIC AND THE GOVERNMENT OF THE REPUBLIC OF GHANA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL GAINS**

The Government of the French Republic and the Government of the Republic of Ghana, desiring to conclude a convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital gains, have agreed as follows:

#### **Article 1 Personal Scope**

This Convention shall apply to persons who are residents of one or both of the Contracting States.

#### **Article 2 Taxes Covered**

1. This Convention shall apply to taxes on income and on capital gains imposed on behalf of a Contracting State or of its local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded by France as taxes on income and by Ghana as taxes on income and on capital gains all taxes imposed on total income or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises as well as taxes on capital appreciation.
3. The existing taxes to which the Convention shall apply are in particular:

- a) in the case of France:
    - (i) the income tax ("l'impôt sur le revenu");
    - (ii) the corporation tax ("l'impôt sur les sociétés");
    - (iii) the tax on salaries ("la taxe sur les salaires");(hereinafter referred to as "French tax");
  
  - b) in the case of Ghana:
    - (i) the income tax;
    - (ii) the capital gains tax;
    - (iii) the petroleum income tax;
    - (iv) the minerals and mining tax;(hereinafter referred to as "Ghana tax").
4. The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of substantial changes which have been made in their respective taxation laws.

### **Article 3**

#### **General Definitions**

1. For the purposes of this Convention, unless the context otherwise requires:
- a) the terms "a Contracting State" and "the other Contracting State" mean France or Ghana, as the context requires;
  
  - b) the term "France" means the European and overseas departments of the French Republic including the territorial sea, and any area outside the territorial sea within which, in accordance with international law, the French Republic has sovereign rights for the purpose of exploring and exploiting the natural resources of the seabed and its subsoil and the superjacent waters;

- c) the term "Ghana" means the territory of the Republic of Ghana including the territorial sea and any area outside the territorial sea within which, in accordance with international law, the Republic of Ghana has sovereign rights for the purpose of exploring and exploiting the natural resources of the seabed and its subsoil and the superjacent waters;
  - d) the term "person" includes an individual, a company and any other body of persons;
  - e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
  - f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
  - g) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
  - h) the term "competent authority" means:
    - (i) in the case of France, the Minister in charge of the Budget or his authorised representative;
    - (ii) in the case of Ghana, the Commissioner of the Internal Revenue Service or his authorised representative.
2. As regards the application of the Convention by a Contracting State, any term not defined therein shall have the meaning which it has under the laws of that State concerning the taxes to which the Convention applies. As regards the application of the Convention by France the meaning of a term under the French taxation law shall have priority over the meaning provided for such term in other branches of French law.

#### **Article 4** **Resident**

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of

a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:
  - a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
  - b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
  - c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;
  - d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.
4. The term "resident of a Contracting State" shall include:
  - a) that State, its local authorities and statutory bodies of either;
  - b) in the case of France, a partnership or other group of persons the place of effective management of which is situated in France, and the shareholders, associates or other members of which are personally liable to tax therein in respect of their part of the profits according to French domestic law.

**Article 5**  
**Permanent Establishment**

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
2. The term "permanent establishment" includes especially:
  - a) a place of management;
  - b) a branch;
  - c) an office;
  - d) a factory;
  - e) a workshop;
  - f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; and
  - g) installation or the provision of supervisory activities in connection therewith incidental to the sale of machinery or parts thereof where the charges payable for such activities exceed 10 per cent of the free on board price of the machinery or parts thereof.
3. A building site or construction, assembly or installation project constitutes a permanent establishment only if it lasts more than six months. Likewise, the provisions of supervisory activities in connection with such site or project constitutes a permanent establishment only if such activities last more than six months.
4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:
  - a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
  - b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

- c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
  - d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
  - e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
  - f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraph a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.
5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting on behalf of an enterprise and has, and habitually exercises in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that Contracting State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.
6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that Contracting State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.
7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other Contracting State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

**Article 6**  
**Income From Immovable Property**

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.
2. The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.
4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.
5. Where the ownership of shares or other rights in a company or legal person entitles the owner to the enjoyment of immovable property situated in a Contracting State and held by that company or legal person, income derived by the owner from the direct use, letting or use in any other form of his right of enjoyment may be taxed in that State.

**Article 7**  
**Business Profits**

1. The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other Contracting State but only so much of them as is attributable to that permanent establishment.
2. Subject to the provisions of paragraph 4, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent

establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. It is understood that:
  - a) where an enterprise of a Contracting State sells goods or merchandise or carries on business in the other Contracting State through a permanent establishment situated therein, the profits of that permanent establishment shall not be determined on the basis of the total amount received by the enterprise, but only on the basis of the remuneration which is attributable to the actual activity of the permanent establishment for such sales or business;
  - b) as regards contracts concluded by an enterprise, when the enterprise has a permanent establishment the profits of such permanent establishment shall not be determined on the basis of the total amount of the contract, but only on the basis of that part of the contract which is effectively carried out by the permanent establishment in the Contracting State where the permanent establishment is situated. The profits related to that part of the contract which is carried out in the Contracting State where the place of management of the enterprise is situated shall be taxable only in that State.
4. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including a reasonable allocation of executive and general administrative expenses incurred for the purposes of the enterprise as a whole, whether in the State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or except in the case of a banking enterprise, by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, of amounts charged (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or except in the



case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.

5. Insofar as it has been customary in a Contracting State to determine according to its law the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.
6. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.
7. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
8. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

### **Article 8** **Shipping and Air Transport**

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated. Those profits shall include profits derived by the enterprise from the use, maintenance or rental of containers used for the transport of goods or merchandise in international traffic or from other activities where such use, maintenance, rental or other activities, as the case may be, are incidental to the operation of ships or aircraft in international traffic.
2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship or the boat is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship or the boat is a resident.
3. The provisions of paragraph 1 shall also apply to profits derived from the participation in a pool, a joint business or an international operating agency.

**Article 9**  
**Associated Enterprises**

1. Where:
  - a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
  - b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.
  
2. Where a Contracting State includes in the profits of an enterprise of that State - and taxes accordingly - profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits where that other State considers the adjustment justified. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

**Article 10**  
**Dividends**

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
  
2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:
  - a) 5 per cent of the gross amount of the dividends where the company paying the dividends is a resident of France, and 7.5 per cent of the gross

amount of the dividends where the company paying the dividends is a resident of Ghana, if in either case the beneficial owner is a company which holds directly or indirectly at least 10 per cent of the capital of the company paying the dividends;

- b) 15 per cent of the gross amount of the dividends in all other cases.

The provisions of this paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

- 3.
  - a) A resident of Ghana who receives from a company which is a resident of France dividends which, if received by a resident of France, would entitle such resident to a tax credit (avoir fiscal) shall be entitled to a payment from the French Treasury equal to such tax credit (avoir fiscal), subject to the deduction of the tax provided for in sub-paragraph b) of paragraph 2.
  - b) The provisions of sub-paragraph a) of this paragraph shall apply only to a resident of Ghana who is:
    - (i) an individual; or
    - (ii) a company which holds directly or indirectly less than 10 per cent of the capital of the company paying the dividends.
  - c) The provisions of sub-paragraph a) of this paragraph shall not apply unless the recipient of the dividends is subject to Ghana tax in respect of the total amount of such dividends and the total amount of the payment from the French Treasury.
  - d) The gross amount of the payment mentioned in sub-paragraph a) of this paragraph shall be deemed to be a dividend for the purposes of this Convention.
- 4. A resident of Ghana, who receives dividends paid by a company which is a resident of France and who is not entitled to the payment from the French Treasury referred to in paragraph 3, may obtain the refund of the prepayment (precompte) effectively paid, if any, by the company in respect of such dividends. The gross amount of the prepayment (precompte) refunded shall be deemed to be a dividend for the purposes of the Convention. It shall be taxable in France according to the provisions of paragraph 2.
- 5. The term "dividend" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income

treated as a distribution by the taxation laws of the Contracting State of which the company making the distribution is a resident. The term "dividend" shall not include income mentioned in Article 17.

6. The provisions of paragraphs 1, 2, 3 and 4 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 15, as the case may be, shall apply.
7. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that other State.

#### **Article 11** **Interest**

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the recipient is the beneficial owner of the interest and is subject to tax in respect of the interest in the other Contracting State, the tax so charged shall not exceed 12.5 per cent of the gross amount of the interest where the beneficial owner is a resident of France and 10 per cent of the gross amount of the interest where the beneficial owner is a resident of Ghana.
3. Notwithstanding the provisions of paragraph 2, any such interest as is mentioned in paragraph 1 shall be taxable only in the Contracting State of which the recipient is a resident, if such recipient is the beneficial owner of the interest and is subject to tax in respect of the interest in that State, and if one of the following conditions is fulfilled:

- a) such recipient is a Contracting State, one of its local authorities, or a statutory body of either; or such interest is paid by one of those entities;
  - b) such interest is paid in connection with the sale on credit of any industrial, commercial or scientific equipment, or with the sale on credit of any merchandise or the furnishing of any services by one enterprise to another enterprise; or
  - c) such interest is paid in respect of any debt-claim guaranteed or insured by a Contracting State or another person acting on behalf of a Contracting State.
4. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article. The term "interest" shall not include any item of income which is defined as a dividend under the provisions of Article 10.
5. The provisions of paragraphs 1, 2 and 3 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 15, as the case may be, shall apply.
6. Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a local authority, a statutory body or another resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.
7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in

the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

## **Article 12** **Royalties**

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties and is subject to tax in respect of the royalties in the other Contracting State the tax so charged shall not exceed 12.5 per cent of the gross amount of the royalties where the beneficial owner is a resident of France and 10 per cent of the gross amount of the royalties where the beneficial owner is a resident of Ghana.
3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (but not including cinematograph films and films or tapes for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience (know-how).
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 15, as the case may be, shall apply.
5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a local authority, a statutory body or another resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the obligation to pay the royalties was incurred and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

### **Article 13** **Management Fees**

1. Management fees arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such management fees may also be taxed in the Contracting State in which they arise, and according to the laws of that State, but if the recipient is the beneficial owner of the management fees the tax so charged shall not exceed 10 per cent of the gross amount of the management fees.
3. The term "management fees" as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any services of a managerial, technical or consultancy nature. Provided that the term "management fees" shall not include any payments in consideration for supervisory activities in connection with a building site or construction, assembly or installation project or for supervisory activities in connection with installation incidental to the sale of machinery or parts thereof.
4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the management fees, being a resident of a Contracting State, carries on business in the other Contracting State in which the management fees arise through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the obligation in respect of which the management fees are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 15, as the case may be, shall apply.
5. A resident of one of the Contracting States who derives and beneficially owns management fees which arise in the other Contracting State may elect, for any year of assessment or financial year, that the tax chargeable in respect of those management fees in the Contracting State in which they arise shall be calculated as if he had a permanent establishment or fixed base in the last-mentioned State and as if those management fees were taxable in accordance with Article 7 or

Article 15, as the case may be, as profits attributable to that permanent establishment or fixed base.

6. Management fees shall be deemed to arise in a Contracting State when the payer is that State itself, a local authority, a statutory body or another resident of that State. Where, however, the person paying the management fees, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the obligation to pay the management fees was incurred, and where such management fees are borne by such permanent establishment or fixed base, then such management fees shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.
7. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the management fees paid exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

#### **Article 14 Capital Gains**

1.
  - a) Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
  - b) Gains from the alienation of shares or rights in a company or legal person the assets of which consist principally, directly or through the interposition of one or more other companies or legal persons, of immovable property situated in a Contracting State or of rights connected with such immovable property may be taxed in that State. For the purposes of this provision, immovable property pertaining to the industrial, commercial or agricultural operation of such company or legal person or to the performance of its independent personal services shall not be taken into account.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including



gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic, or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
4. Gains from the alienation of any property, other than that referred to in the preceding paragraphs of this Article, shall be taxable only in the Contracting State of which the alienator is a resident.

#### **Article 15 Independent Personal Services**

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base.
2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

#### **Article 16 Dependent Personal Services**

1. Subject to the provisions of Articles 17, 19, 20 and 22, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:
  - a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days within any period of twelve months, and

- b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
  - c) the remuneration is not borne by a permanent establishment which the employer has in the other State.
3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

#### **Article 17** **Director's Fees**

Director's fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

#### **Article 18** **Artistes and Athletes**

1. Notwithstanding the provisions of Articles 15 and 16, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.
2. Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7, 15 and 16, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.
3. Notwithstanding the provisions of paragraph 1, income derived by a resident of a Contracting State as an entertainer or an athlete from his personal activities as such exercised in the other Contracting State shall be taxable only in the first-mentioned State if those activities in that other State are supported mainly by public funds of the first-mentioned State, its local authorities or statutory bodies of either.
4. Notwithstanding the provisions of paragraph 2, where income in respect of personal activities exercised by an entertainer or an athlete, resident of a Contracting State, in his capacity as such in the other Contracting State accrues not to the entertainer or athlete himself but to another person, that income,

notwithstanding the provisions of Articles 7, 15 and 16, shall be taxable only in the first-mentioned State, if that other person is supported mainly by public funds of that first-mentioned State, its local authorities or statutory bodies of either.

#### **Article 19 Pensions**

1. Subject to the provisions of paragraph 2 of Article 20, pensions and other similar remuneration paid in consideration of past employment to a resident of a contracting state shall be taxable only in that state if such resident is subject to tax in respect of those items of income in that state.
2. Notwithstanding the provisions of paragraph 1, pensions and other payments made under the social security legislation of a contracting state may be taxed in that state.

#### **Article 20 Public Remuneration**

1.
  - a) Remuneration, other than a pension, paid to an individual by a Contracting State or a local authority thereof, or by a statutory body of either to an individual in respect of services rendered shall be taxable only in that State.
  - b) However, such remuneration shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State without being also a national of the first-mentioned State.
2.
  - a) Any pension paid to an individual by, or out of funds created by, a Contracting State or a local authority thereof or a statutory body of either shall be taxable only in that State.
  - b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State without being also a national of the first-mentioned State.
3. The provisions of Articles 16, 17 and 19 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a local authority thereof or by a statutory body of either.

#### **Article 21 Students**

Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

#### **Article 22** **Teachers**

1. A professor or teacher who visits one of the Contracting States for the purpose of teaching or engaging in research at a university or any other officially recognised educational institution in that State and who, immediately before that visit, was a resident of the other Contracting State shall be exempted from tax in the first-mentioned State in respect of any remuneration received for such teaching or research for a period not exceeding two years from the date of his first arrival in that State for such purpose. Such remuneration shall be taxable only in the other State, to the extent that it arises in that other State.
2. The provisions of this Article shall apply only to income from research if such research is undertaken by the professor or teacher in the public interest and not primarily for the benefit of some private person or persons.

#### **Article 23** **Other Income**

Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State if such resident is subject to tax in respect of those items of income in that State.

#### **Article 24** **Elimination of Double Taxation**

1. In the case of France, double taxation shall be avoided as follows:
  - a) Income arising in Ghana, which may be taxed or shall be taxable only in that State in accordance with the provisions of this Convention, shall be taken into account for the computation of the French tax where the beneficiary of such income is a resident of France and where such income is not exempted from corporation tax according to French law. In that case, the Ghana tax shall not be deductible from such income, but the beneficiary shall be entitled to a tax credit against French tax. Such tax credit shall be equal:

- (i) in the case of income other than income mentioned in subparagraph (ii), to the amount of French tax attributable to such income;
  - (ii) in the case of income referred to in paragraph 5 of Article 6, Articles 7, 10, 11, 12, 13, paragraph 1 of Article 14, paragraph 3 of Article 16, Article 17, paragraphs 1 and 2 of Article 18 and paragraph 2 of Article 19, to the amount of tax paid in Ghana in accordance with the provisions of those Articles however, such tax credit shall not exceed the amount of French tax attributable to such income.
- b) As regards the provisions of subparagraph a), it is understood that:
  - (i) the term "amount of French tax attributable to such income" means:
    - where the tax on such income is computed by applying a proportional rate, the amount of the net income concerned multiplied by the rate which actually applies to that income;
    - where the tax on such income is computed by applying a progressive scale, the amount of the net income concerned multiplied by the rate resulting from the ratio of the tax actually payable on the total net income taxable in accordance with French law to the amount of that total net income;
  - (ii) the term "amount of tax paid in Ghana" means the amount of Ghana tax effectively and definitively borne in respect of the income concerned, in accordance with the provisions of the Convention, by the beneficiary who is a resident of France.
- c) As regards the application of subparagraph a) to income referred to in Articles 11, 12 and 13, where the amount of tax paid in Ghana in accordance with the provisions of those Articles exceeds the amount of French tax attributable to such income, the resident of France who is the beneficiary of such income may present his case to the French competent authority. If it appears to it that such a situation results in taxation which is not comparable to taxation on net income, that competent authority may, under the conditions it determines, allow the non credited amount of tax paid in Ghana as a deduction from the French tax levied on other income from foreign sources derived by that resident.

- d) Where, according to its legislation, France in determining the taxable profits of its residents takes into account the profits of associated enterprises which are enterprises of Ghana or of permanent establishments situated in Ghana, the provisions of the Convention shall not prevent the application of that legislation.
2. In the case of Ghana, double taxation shall be avoided as follows.
- a) French tax payable under the laws of France and in accordance with the provisions of the Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within France (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any Ghana tax computed by reference to the same profits, income or chargeable gains by reference to which French tax is computed.
  - b) In the case of a dividend paid by a company which is a resident of France to a company which is resident in Ghana and which controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividend, the credit shall take into account (in addition to any French tax for which credit may be allowed under the provisions of subparagraph a)) the French tax payable by the company in respect of the profits out of which such dividend is paid.
  - c) In any case the amount of tax credit to be granted under this paragraph shall not exceed the proportion of the Ghana tax which such profits, income or chargeable gains bear to the entire profits, income or chargeable gains chargeable to Ghana tax.
  - d) For the purposes of this paragraph, profits and income owned by a resident of a Contracting State which may be taxed in the other Contracting State in accordance with the Convention shall be deemed to arise from sources in that other State.
3. For the purpose of subparagraph a) (ii) of paragraph 1, notwithstanding the provisions of subparagraph b) (ii) of the same paragraph 1, the term "amount of tax paid in Ghana" shall be deemed to include any amount which would have been payable as Ghana tax for any year but for an exemption or reduction of tax granted for that year on any part thereof under any of the following provisions of Ghana law:
- a) Sections 12 and 13 of the investment code 1985 (PNDCL, 116) but in the case of Section 12 excluding the exemption or reduction of tax granted to any enterprise solely in respect of activities specified in Part A.

Manufacturing Industries: (a) manufacturing for export; Sections 3(1)(f), 3(1)(tt), 4A and 4B of the Income Tax Decree 1975 (SMCD5); Sections 23 and 26 of the Minerals and Mining Law 1986 (PNDCL, 153), so far as they were in force on, and have not been modified since, the date of signature of the Convention, or have been modified only in minor respects so as not to affect their general character; or

- b) any other provision which may subsequently be made granting an exemption or reduction of tax which is agreed by the competent authorities of the Contracting States to be of a substantially similar character, if it has not been modified thereafter or has been modified only in minor respects so as not to affect its general character.

Provided that relief from French tax shall not be given by virtue of this paragraph in respect of income from any source if the income arises in a period starting more than ten years after the exemption from, or reduction of, Ghana tax was first granted.

#### **Article 25 Non-Discrimination**

1. Individuals possessing the nationality of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which individuals possessing the nationality of that other State in the same circumstances, in particular with respect to residence, are or may be subjected.
2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, paragraph 6 of Article 12 or paragraph 7 of Article 13 apply, interest, royalties, management fees and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall be deductible, for the purpose of determining the taxable profits of that enterprise, under the same conditions as if they had been paid to a resident of the first-mentioned State.

4. Nothing in this Convention shall prevent a Contracting State from applying the provisions of its domestic taxation law regarding thin capitalization, to the extent that such application is in accordance with the principles contained in paragraph 1 of Article 9.
5. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.
6. Payments made by or for an individual who is a resident of a Contracting State to a pension scheme established in the other Contracting State may be relieved from tax in the first-mentioned State provided that the pension scheme is accepted by the competent authority of that State as corresponding to a pension scheme recognised as such for tax purposes by that State. In such case relief from tax shall be given in the same way as if the pension scheme was recognised as such for tax purposes by that State.
7. Subject to mutual agreement between the competent authorities, the exemptions and other advantages provided by the tax laws of a Contracting State for the benefit of that Contracting State or its local authorities or of statutory bodies of either which carry on a non-business activity shall apply under the same conditions respectively to the other Contracting State or its local authorities or to statutory bodies of either, which carry on the same or similar activity. Notwithstanding the provisions of paragraph 8, the provisions of this paragraph shall not apply to taxes or duties payable in consideration for services rendered to a Contracting State or its local authorities or to statutory bodies of either.
8. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.
9. If any treaty, agreement or convention between the Contracting States, other than this Convention, includes a non-discrimination clause or a most-favoured nation clause, it is understood that only the provisions of this Convention, to the exclusion of such clauses, shall apply in tax matters.

#### **Article 26**

##### **Mutual Agreement Procedure**

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the



provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.
3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or the application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.
4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. When it seems advisable in order to reach agreement to have an oral exchange of opinions, such exchange may take place through a commission consisting of representatives of the competent authorities of the Contracting States.
5. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of the Convention and, especially, the requirements to which the residents of a Contracting State shall be subjected in order to obtain, in the other Contracting State, the tax reductions or exemptions and other advantages provided for by the Convention.

## **Article 27**

### **Exchange of Information**

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the

taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:
  - a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
  - b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
  - c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

#### **Article 28 Diplomatic Agents and Consular Officers**

1. Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions and their personal domestics, of members of consular posts, or of members of permanent missions to international organisations under the general rules of international law or under the provisions of special agreements.
2. Notwithstanding the provisions of Article 4, an individual who is a member of a diplomatic mission, consular post or permanent mission of a Contracting State which is situated in the other Contracting State or in a third State shall be deemed for the purposes of the Convention to be a resident of the sending State if he is liable in the sending State to the same obligations in relation to tax on his total income or on capital as are residents of that State.
3. The Convention shall not apply to international organisations, to organs or officials thereof and to persons who are members of a diplomatic mission, consular post or permanent mission of a third State, being present in a Contracting State and not liable in either Contracting State to the same obligations in relation to tax on their total income or on capital as are residents of those States.

#### **Article 29 Territorial Extension**

1. This Convention may be extended, either in its entirety or with any necessary modifications, to the overseas territories and other local authorities of the French Republic which impose taxes substantially similar in character to those to which the Convention applies. Any such extension shall take effect from such date and subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed between the Contracting States in notes to be exchanged through diplomatic channels or in any other manner, in accordance with their constitutional procedures.
2. Unless otherwise agreed by both Contracting States, the termination of the Convention by one of them under Article 31 shall also terminate, in the manner provided for in that Article, the application of the Convention to any territory and local authority to which it has been extended under this Article.

### **Article 30 Entry Into Force**

1. Each of the Contracting States shall notify to the other the completion of the procedures required by its law for the bringing into force of this Convention. The Convention shall enter into force on the first day of the second month following the day when the later of those notifications has been received.
2. The provisions of the Convention shall have effect:
  - a) in respect of taxes withheld at source, for amounts taxable after the calendar year in which the Convention enters into force;
  - b) in respect of other taxes on income and on capital gains, for income and gains relating to any calendar year or accounting period beginning after the calendar year in which the Convention enters into force.

### **Article 31 Termination**

1. This Convention shall remain in force indefinitely. However, after a period of five calendar years from the date on which the Convention enters into force, either Contracting State may terminate it through diplomatic channels by giving notice of termination at least six months before the end of any calendar year.
2. In such event the Convention shall cease to have effect:
  - a) in respect of taxes withheld at source, for amounts taxable after the calendar year in which the notice of termination is given;

- b) in respect of other taxes on income and on capital gains, for income and gains relating to any calendar year or accounting period beginning after the calendar year in which the notice of termination is given.

In witness whereof, the undersigned, duly authorised thereto, have signed this Convention.

Done at \_\_\_\_\_ this 5th day of April 1993 in duplicate, in the French and English languages, both texts being equally authentic.

**FOR THE GOVERNMENT OF THE REPUBLIC  
OF GHANA:**

*[signature]*

**FOR THE GOVERNMENT OF THE FRENCH  
REPUBLIC:**

*[signature]*

#### **MEMORANDUM OF UNDERSTANDING**

Negotiations were held in Paris from November 30 to December 4, 1992 between delegations of Ghana and France with a view to concluding a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital gains.

The composition of both delegations is attached as annex I.

The discussions took place in a warm and friendly atmosphere.

Agreement was reached after five days of negotiation on a draft Convention the text of which is attached as annex II.

Both delegations indicated their willingness to do everything possible to ensure a quick signature and ratification of the Convention.

Done in Paris on December 4, 1992

**FOR THE GHANA DELEGATION:**

*Dr Kobena G. Erbynn*

**FOR THE FRENCH DELEGATION:**

*Dominique Lemaire*